

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10537 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBEN S MAKWANA

Versus

STATE OF GUJARAT

Appearance:

MS PAHWA for M/S THAKKAR ASSOC. for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 19th November, 1998, made by the District Magistrate, Bharuch, under the powers conferred upon him

under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. Five offences punishable under the Bombay Prohibition Act are registered against the petitioner. In each of the said cases, the petitioner was found to be in possession of substantial quantity of country liquor as well as foreign liquor. Besides, three individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on public tranquility and even tempo of life, and particularly referred to the incidents of 1st November, 1998 and 2nd November, 1998 respectively. In each of the incidents, the petitioner is alleged to have beaten the concerned witness and issued threat of dire consequences and to have used a lethal weapon to cow down the witnesses.

Amongst other grounds, it is contended that the subjective satisfaction recorded by the Detaining Authority in respect of the statements given by the witnesses is not supported by the evidence on record. In the grounds of detention, the Detaining Authority has referred to the statements given by three individuals and has stated that all the said witnesses were summoned before the Detaining Authority and the genuineness of the statements was verified by the Detaining Authority personally. It is categorically averred that the Detaining Authority had not summoned the witnesses before him, nor has he personally verified the statements made by the witnesses. The averments are not controverted by the Detaining Authority by filing a counter affidavit. However, Ms.Punani, the learned AGP has referred to the records of the matter and has submitted that the Detaining Authority has personally verified the statements made by the witnesses. Upon perusal of the records, I find that verifications recorded by the Detaining Authority do not suggest that the concerned witness was summoned before the Detaining Authority. Instead, it appears that the statements recorded by the police were verified by the Divisional Police Officer and the Detaining Authority has made an endorsement of verification. From the endorsements made by the District Magistrate, it is not possible to infer that the concerned witness was summoned before the Detaining Authority. Hence, to me, it appears that the statements

made in the grounds of detention in respect of the verification of the statements made by the witnesses is not supported by the evidence on record. The subjective satisfaction recorded by the Detaining Authority is, therefore, vitiated. Consequently, the continued detention of the petitioner is illegal and invalid.

Petition is, therefore, allowed. The order dated 19th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI*